

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OHIO

JOHN L. TURNER, JR.,)	CASE NO. 1:06 CV 378
)	
Petitioner,)	JUDGE PETER C. ECONOMUS
)	
v.)	
)	<u>MEMORANDUM OF OPINION</u>
ROB JEFFREYS,)	<u>AND ORDER</u>
)	
Respondent.)	

On February 17, 2006, petitioner pro se John L. Turner filed the above-captioned petition for writ of habeas corpus under 28 U.S.C. § 2254. Turner is confined in an Ohio penal institution, having been convicted, pursuant to a guilty plea, on two counts of aiding and abetting illegal conveyance of drugs. For the reasons stated below, the petition is denied and this action is dismissed.

A federal court may entertain a habeas petition filed by a person in state custody only on the ground that he is in custody in violation of the Constitution, laws, or treaties of the United States. In addition, petitioner must have exhausted all available state remedies. 28 U.S.C. § 2254.

It is evident on the face of the petition that Turner has not exhausted his state court remedies, as he currently has a

postconviction motion pending in the Ohio Court of Common Pleas wherein he raises a challenge to his sentence, an issue which is one of the grounds in the instant action. Petition, pp. 3-4, 6.

Because the petition raises an issue on which petitioner has yet to fully exhaust state court remedies, it is subject to the rule of Rose v. Lundy, 455 U.S. 509 (1982), that "a district court must dismiss habeas petitions containing both unexhausted and exhausted claims. [footnote omitted]." Id. at 522.

Accordingly, pursuant to Rule 4 of the Rules Governing Section 2254 Cases, the petition is denied and this case is dismissed without prejudice. Further, the Court certifies, pursuant to 28 U.S.C. § 1915(a)(3), that an appeal from this decision could not be taken in good faith, and that there is no basis on which to issue a certificate of appealability. Fed.R.App.P. 22(b); 28 U.S.C. § 2253.

IT IS SO ORDERED.

S/Peter C. Economus - 3/16/06
PETER C. ECONOMUS
UNITED STATES DISTRICT JUDGE